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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
19 November 1948

UNITED STATES OF AMERICA VS KIICHI YOSHIDA

Review of the Staff Judge Advocate

1. The attached record of trial of Kiichi Yoshida, at Yokohama, Japan, from 23 August 1948 to 9 September 1948 by a Military Commission appointed by paragraph 1, Special Orders No. 188, Headquarters Eighth Army, dated 18 August 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Kiichi Yoshida	DATE OF CONFINEMENT: 8 July 1948
AGE: 56	DATE OF ARRAIGNMENT: 23 Aug 1948
RESIDENCE: Saga Ken, Higashi-matsuura Gun, Kagami Mura #4137	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married, four children	PERIOD OF TRIAL: 23 August 1948 to 9 September 1948
RELATIVES: None	DATE OF SENTENCE: 9 September 1948
EDUCATION: 5 years primary school; 5 years middle school; 4 years at Naval Academy	SENTENCE: CHL for 6 years
VOCATION: Naval officer.	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Graduated from the Naval Academy in 1916 as an ensign. Remained on active duty until May 1946 when he was demobilized as Naval Captain.	

2. Synopsis of Charges, Pleas, Findings and Legal Sufficiency:

<u>Charge and Specification</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused, at the time and place set forth in the specification hereto attached, and during a time of war between the United States of America, its Allies and Dependencies and Japan, did violate the Laws and Customs of War.	NG	G	Yes

Specification (As amended, R 4, 109): Between 3 April 1945 and 4 May 1945, the accused, then and there being the commanding officer of the 15th Naval Guard Unit, and having in his custody Captain Merritt E. Lawlis, Staff Sergeant Benjamin T. Muller and Staff Sergeant Charles L. Suey, American Prisoners of War, did permit his subordinates to willfully and unlawfully mistreat, abuse, and cause intense physical and mental suffering and impairment of health to the said Prisoners of War, which contributed to the death of said Staff Sergeant Charles L. Suey at Sanya on or about 13 May 1945 by:	NG	G	Yes
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except the words "which contributed to the death of said Staff Sergeant Charles L. Suey at Sanya on or about 13 May;" and of the excepted words, Not Guilty.

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| a. (As amended, R 109): Per-
mitting his subordinates to beat
and mistreat the said Prisoners
of War: | NG | G | Yes |
| b. (As amended, R 109): Neg-
lected to provide the said
Prisoners of War with adequate
and proper quarters; | NG | G | Yes |
| c. Neglecting and refusing to
provide the said Prisoners of
War with necessary medicines,
medical attention, and hospi-
talization; | NG | G | Yes
except the words
"and refusing" and
the word "necessary"
substituting for the
latter exception the
word, "adequate."
Of the excepted words,
Not Guilty. Of the
substituted words,
Guilty. |
| d. Ordering and permitting his
subordinates to expose the said
Prisoners of War to the hatred,
ridicule, and contempt of the
local populace; and | NG | G | Yes
except the words
"hatred, ridicule
and contempt," sub-
stituting therefor
the word "curiosity"
and except the word
"and." Of the ex-
cepted words, Not
Guilty. Of the sub-
stituted words,
Guilty.. |
| e. Permitting the local populace
to beat, stone, and subject the
said Prisoners of War to insults
and indignities. | NG | NG
(R 109, 110) | |

3. Summary of the Evidence:

a. For the Prosecution:

As to the Specification: On April 3, 1945, a U. S. Army aircraft was shot down off Hainan Island (South China). Three crew survivors, the PW's, Captain Merritt E. Lawlis, Staff Sergeant Benjamin T. Muller, and Staff Sergeant Charles L. Suey (now deceased) were rescued by Japanese of the 15th Naval Guard Unit nearby, under command of the accused. The PW's were detained about thirty (30) days before being transferred. The incidents on which the charge is based, occurred during this first detention.

In the loss of the aircraft the three PW's all sustained burns, those of PW Suey being serious. Upon being taken ashore the PW's were bound hand and foot, and taken before the accused for in-terrogation. A demand for medical attention made by PW Captain Law-
lis, especially on behalf of PW Suey, was ignored by the accused, who replied that the PW's would be killed if they failed to give in-formation (Ex 1, 2).

The PW's were then placed in cells, handcuffed and held in solitary confinement for about thirty (30) days. Scanty medical treatment was afforded beginning with the third day (Ex 1, 2). While in confinement, the PW's were often beaten with sticks, poles and fists by the guards and naval officers (Ex 1, 2). The PW's were also exposed to public curiosity in a parade at a nearby Chinese town (Ex 1, 2).

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As to e: Not guilty.

b. For the Defense:

The defense offered the testimony of four live witnesses plus the accused. The substance of the defense was a general denial of any mistreatment or beatings, affirming that adequate medical treatment was afforded under the circumstances; the quarters of confinement were the only ones available and not unhealthful, and that the parade was held at the request of the local Chinese General, as being in conformity with Chinese custom.

Defense witness Shimodo (medical officer) stated he gave medical treatment to all three PW's promptly upon landings and daily thereafter (R 115-116); they did not need hospitalization; he treated them with ointments in accordance with regular medical practice (R 115); the PW's had recovered sufficiently to march in the parade (R 117); he admitted that on two occasions they came to him with hands tied and blindfolded, but that he ordered such conduct to cease (R 116). He denied knowledge of any beatings of the PW's; that he informed his CO, the accused, of their medical progress (R 131); the PW's did not lose much weight (R 132). He never received orders from the accused to render medical treatment (R 116). His Unit was very short of medical supplies because of the war situation, but that the PW's were given the best of their facilities (R 115, 116).

Witness Admiral Goga, Island Commander, testified that he never had any report of mistreatment of PW's from anyone, he first learning of it after the war was over (R 138). The accused had complete responsibility for the PW's while under his (accused's) custody (R 143). Staff officer Tada (Ex 7) never made any report to him of any mistreatment of the PW's, apparently observed on an inspection trip made to the Unit of the accused (thus contradicting Tada's affidavit) (R 137); that he usually had confidence in the reports of Tada (R 143). The witness identified a Japanese book of regulations concerning International Law Rules (R 145). He conceded that PW's should not be kept in a guardhouse unless for punishment (R 147). The PW's appeared to be in good physical condition when he saw them upon their arrival at his headquarters (R 141) about a month after capture.

Witness Sata, staff officer with Admiral Goga, testified that witness Tada (Ex 7) never informed him of any mistreatment of the PW's (R 148). The 15th Naval District (accused's command) had no special facilities for the accommodation of PW's. He never saw the PW's at all (R 149, 155).

Witness Isao testified he was Superintendent of Hainan Hospital at the post of Admiral Goga; that around August 15, 1945, he treated two PW's, Lawlis and Muller for malaria and diarrhea, but never saw the PW Suey (who had died about two weeks after transfer to Admiral Goga's area). Witness had no knowledge of PW Suey (R 158, 163).

The accused, after being duly warned of his rights, testified on his own behalf (R 167). He did not recall any request for medical aid; he recognized their need for medical attention, ordered it be rendered, and heard his orders had been obeyed (R 168). He gave no permission to anyone to mistreat or beat the PW's, and received no word of any mistreatment (R 169). He admitted giving permission for the parade of the PW's, it being done at the request of the local Chinese general (R 170, 181). He ordered members of the Japanese military to accompany the PW's so

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that no harm would come to them; he had a report of one spectator striking a PW while on parade, but without serious injury (R 170). He admitted the clothing of the PW's was not sufficient (Ex 9). The quarters were inadequate, but not unhealthful (R 183) and none other available (R 168, 181). That promptly upon their capture, he had telegraphed for instructions, and was told to wait further orders (R 15, 180, 181).

Several of his officers could enter the detention area without his specific permission (R 170, 171; Ex 8). He had 5,000 men under his command, scattered around a large area (R 171), and about 400 men at his headquarters (R 42, 171), and he was busy with military duties looking towards repelling a landing by the enemy (R 173; Ex 8, 9).

The accused admitted responsibility for the handcuffing and solitary confinement, but disclaimed actual knowledge of it (R 172, 183). He admitted general responsibility for the PW's, but that subordinate officers also had such responsibilities (R 173; Ex 9, p 4).

4. Opinion:

The defense objected to the introduction of a written statement of the accused (R 76; Ex 8), inasmuch as the statement failed to indicate the accused had first been duly warned of his rights of not being obliged to testify or incriminate himself, and claimed such introduction into evidence would nullify his privilege of remaining silent. Testimony was thereupon taken by the Commission as to the circumstances surrounding the obtaining of the written statement (R 85).

The evidence submitted therein was sufficient to justify the trial commission in admitting the statement into evidence as one voluntary in nature (R 85 to 95), and complied with the provisions of SCAP Rules, Subj. "Confessions," Amendment to Regulations, etc; Ltr 27 Dec 46, par 5, etc, quoted in (R 80), and also commented upon in Case #149 (Namba).

The fact that the affiant was not duly warned of the effect and use of his statement does not bar it from being brought before the court as long as it was not made voluntarily. (Wilson vs U S 162 U S 613).

The evidence displayed the accused had a command responsibility for the care and welfare of the PW's, and as such, can be held liable:

"The camp commandant has the duty to protect prisoners, and by use of diligence must determine that they are not being mistreated. If he knows, or by negligence does not, he has committed an offense." (Case #76, Kaneko).

The accused neglected to make any inspection of the detention area nor visited the prisoners, (Ex 8, 9; R 180). In such a small camp area, and with so small a group as existed there, it is conceivable to reasonable persons, that the accused knew, or should have known of the conditions and mistreatment afforded the PW's. The evidence shows a disregard of and disinterest in the welfare and safekeeping of the PW's.

The parade of the PW's was a clear violation of International Law, and was conceded as such by the accused. He attempted excusable justification on the theory the parade was demanded by the local Chinese military commander.

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The damaging evidence in the affidavits of the PW's, (Ex 1, 2) was corroborated in part by various portions of the testimony of the live witnesses for both the prosecution and defense, though the Japanese witnesses understandably attempted to gloss over any acts of wrongdoing.

Defense questioned the value of Tada's affidavit (Ex 7), (argument of defense counsel, R 212, 213) upon the ground that while apparently yet in Japan he could not be found, having decamped shortly after executing his affidavit. The trial court properly determined its weight.

The record is legally sufficient to support the findings of the Commission; it was constituted by proper authority; had jurisdiction of the accused, and of the offenses alleged. The accused was duly warned of his rights; he had a fair trial, was excellently defended by American Advisory counsel; he also had a Japanese attorney and interpreter of his own choosing. The Commission committed no error which injuriously affected the substantial rights of the accused. There was no evidence that the accused was insane at the time of the doing of the alleged acts, or at the time of the trial, and insanity was not an issue.

5. Recommendations:

It is considered that mitigating circumstances exist to justify a reduction of the sentence. The guilt of the accused lies largely in acts of omission rather than commission. While command responsibility existed, it was that of a commander of a tactical unit rather than a prisoner of war camp commandant. Medical treatment was actually rendered, but not as thoroughly and sympathetically as might be desired. No direct evidence was offered showing the accused ordered or had knowledge of the beatings, though such knowledge can be inferred under the circumstances existing. While the parade of the PW's was wrongful, yet its initiation lay with the local Chinese military. The explanation for the length of the thirty (30) day confinement was rational.

Therefore, it is considered that the sentence of six (6) years confinement at hard labor be reduced to that of three (3) years confinement at hard labor. As the accused was confined for less than three months prior to his trial, it is not recommended that any portion of the sentence be remitted.

6. Action:

A form of action designed to carry these recommendations into effect is attached hereto.

ALBERT LYMAN
Reviewer
Judge Advocate Section

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I concur in general. However, it is considered that the sentence of six years confinement at hard labor is not excessive for conviction of the offenses of which accused was found guilty. Three prisoners of war suffered many serious and prolonged beatings and other mistreatments to such an extent that the accused could not have escaped knowledge thereof. It was within his power to have prevented the abuses and indeed it was his admitted duty to protect his helpless charges from just such occurrences. Approval of the sentence is recommended.

A proposed alternate action to implement this recommendation is attached.

ALLAN R. BROWNE
LT Col, JAGD
Army Judge Advocate

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